



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-01666

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

08/09/2018

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant mitigated the security concerns regarding his financial considerations. Eligibility for access to classified information is granted.

Statement of Case

On June 6, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AGs) implemented by DOD on September 1, 2006.

The Security Executive Agent, by Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016, superceded and replaced the September 2006 adjudicative guidelines (AGs). They apply to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. Procedures for administrative due process for contractor personnel continue to be governed by DOD Directive 5220.6, subject to the updated substantive changes in the AGs, effective June 8, 2017. Application of the AGs that were in effect when the SOR was issued would not affect my decision in this case.

Applicant responded to the SOR on June 2, 2017, and requested a hearing. The case was assigned to another judge on March 23, 2018, and reassigned to me on April 9, 2018. The case was scheduled for hearing on May 8, 2018. The Government's case consisted of five exhibits. (GEs 1-5) Applicant relied on one witness (himself) and nine exhibits. (AEs A-I) The transcript was received on May 16, 2018.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with his student loan payment history relative to SOR debt ¶ 1.a and document creditor payments to SOR debt ¶ 1.b. For good cause shown, Applicant was granted 14 days to supplement the record. Department Counsel was afforded three days to respond.

Within the time permitted, Applicant provided documented copies of his rehabilitation agreement with his Department of Education (DoE) student loan lender and payments and payment arrangements with SOR creditors ¶ 1.b-1.c and 1.e-1.h. Applicant's submissions were admitted as AEs J-O.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated a delinquent student debt exceeding \$96,000 and seven delinquent debts exceeding \$20,000. Allegedly, these listed debts remain unresolved and outstanding.

In his response to the SOR, Applicant admitted each of the listed SOR debts with explanations. He claimed to have been through extenuating circumstances, leading to financial burden that he would explain in his attached documents. He claimed he chose a path to support his family and avoid bankruptcy, which would tarnish his credit (sic). He claimed to be working to fulfill all of his financial obligations over the past four years and recently took a position with his most recent employer to help his financial situation and increase his quality of life.

Addressing risks of engaging in illegal or otherwise questionable acts for financial gain, Applicant claimed he could never be swayed to expose sensitive information. And he claimed he hoped he could continue to improve the U.S. Navy and demonstrate his loyalty.

Findings of Fact

Applicant is a 38-year-old senior engineer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted are incorporated by reference. Additional findings will follow.

Background

Applicant married in September 2005 and legally separated in February 2011. (GEs 1-2; Tr. 31-32, 35) He has two children from this marriage who for several years he raised as a single parent without any financial support from his wife. (Tr. 27, 32, and 34-35). To date, he and his wife have not finalized their divorce, mainly out of Applicant's concern for keeping his wife on his health insurance policy. (Tr. 38 and 45-46)

Applicant earned a bachelor's degree in electrical engineering in December 2002 from a respected university. (GEs 1-2) Since then, he has taken several college courses from other colleges and earned several certificates. (Tr. 30-31) Applicant reported no military service.

Since July 2016, Applicant has been employed by his current employer. (Tr. 33) Between 2000 and 2016, he worked for other employers in the field of electrical engineering. (GEs 1-2; Tr. 32-33)

Applicant's finances

In November 2007, Applicant co-signed for his wife's private student loans. (GEs 1-5; Tr. 37) The loans exceeded \$120,000. (GEs 1-5 and AE A) In their separation agreement, Applicant's wife agreed to assume responsibility for the entire loan balance. (AE A; Tr. 38 and 44-45) Before their separation in February 2011, Applicant's wife bore full financial responsibility for the loans, and the two of them maintained her student loans in current status. (GEs 3-5) Once they separated, in 2011, she lost her job, and she ceased making monthly payments on her loans. (GEs 3-5; Tr. 27-28, 38-39) After a year of non-payment of her loans, the lender notified Applicant of his wife's loan defaults. (GEs 1-2) And, for several years thereafter, Applicant made payments on his wife's student loans. (GEs 1-2; Tr. Tr. 28-29, 36 and 48-49) Applicant's wife resumed her student loan payments in July 2015, once she returned to working, and documented her resumption of payments, along with her providing financial support for the children. (AEs A-B and J; Tr. 29, 36, 40, and 48)

Credit records document that before their separation in 2011, Applicant and his wife maintained excellent credit. (GEs 1-5) Since their student loan default, his wife's student loan debts have been transferred to a government-guaranteed lender and the creditor substituted Applicant's wife as the sole obligor on the loans. (AEs B and J) Applicant is no longer responsible for his wife's student loans as a co-signatory. (AEs B and J) And, while his divorce is not final, he no longer bears any financial responsibility for his wife's loans. (AEs A-B) Applicant documented his being removed from the student

loan he co-signed for his wife (SOR ¶ 1.a). The creditor 1.a payment profile he provided with his post-hearing submissions reports a total current balance owing of \$98,854 with a zero balance owing as of May 2018. (AE J) The submission corroborates and substantiates Applicant's claims that his wife is keeping her student debts in current status.

Besides his listed delinquent student loans, Applicant accumulated several delinquent consumer loans: SOR debts ¶¶ 1.b (\$18,968); 1.c (\$11,964); 1.d (\$299); 1.e (\$143); 1.f (\$255); 1.g (\$310); and 1.h (\$120). He attributed his delinquent debts to his spousal separation and inadequate income in his previous employment to cover the shortfall from his separation. (GE 2; Tr. 62-63)

Applicant has since documented his payoffs of SOR debts ¶¶ 1.b (\$7,250); 1.h (\$120); 1.e and 1.h (medical debts totaling \$453); and 1.f (\$165), which are covered by AEs E, K-M, and O; Tr. 49-61 and 78-93) And, he documented a payment agreement in place with creditor 1.c. (AE N)

Currently, Applicant and his wife split their custody of the children and share financial support for them. (Tr. 40-41) Both Applicant and his wife "make good money" and have stabilized their finances. (Tr. 41-42 and 63-64) Applicant nets \$1,414 a week and has a 401(k) retirement plan with \$69,116 in the plan. (AEs F-G)

Character references

Applicant is well regarded by his engineering manager. (AE I) His manager credited Applicant with being trustworthy individual with extensive knowledge in his assigned fields attributable in part to his experience working for the Navy and various test laboratories.

Policies

The SEAD 4, App. A lists guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and many of the conditions that could mitigate security concerns.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with App. A. AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in App. A, AG ¶ 2(d) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following App A, AG ¶ 2(d) factors are pertinent: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Financial Considerations

The Concern: Failure or inability to live within one's means, satisfy debts and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse of dependence. An individual who is financially overextended is at greater risk of having to engage in illegal acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995).

As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Security concerns are raised over Applicant's accumulation of delinquent student loan and consumer debts following his marital separation in 2011. Applicant's accumulated debt delinquencies warrant the application of two of the disqualifying conditions (DC) of the Guidelines: DC ¶¶ 19(a), "inability to satisfy debts," and 19(c), "a history of not meeting financial obligations."

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles him to access classified information. While the principal concern of a security clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving debt delinquencies.

Historically, evaluation of an applicant's delinquent debts are critical to an assessment of the applicant's trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). Applicant's separation from his wife and his ensuing assumption of payment responsibility for his wife's student loans he co-signed for and other debts he assumed as a single parent afford good grounds for crediting him with extenuating circumstances.

Based on his cited circumstances, MC ¶ 20(b), “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances,” partially applies to Applicant’s situation.

Applicant’s wife has since resumed her payment responsibilities for her student loans and brought her student loan accounts current. Addressing his remaining debts, he has either paid or otherwise resolved them. Based on the resolution of the student loan debts he co-signed for and his most recent payment initiatives with his remaining debts, Applicant may claim the mitigation benefits of the “acting responsibly” prong of MC ¶ 20(b), as well as the benefits of another mitigating condition. MC ¶ 20(d), “the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts,” is fully applicable. See ISCR Case No. 15-06440 at 3-5 (App. Bd. Dec. 26, 2017); ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. Nov. 29, 2005)).

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a “meaningful track record” that includes evidence of actual debt reduction through voluntary payment of debts. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). In Applicant’s case, he has addressed his listed student loan and consumer debts and resolved them with payoffs (SOR debts ¶¶ 1.b and 1.d-1.h) and satisfactory payment arrangements with SOR creditor 1.c.

Whole-Person Assessment

In making a whole-person assessment of Applicant’s trustworthiness, reliability, and good judgment, consideration is given to not only the financial issues raised in the SOR, but the contributions he has made to his employer and the defense industry in general. Favorable credit is also warranted for the corrective steps Applicant has taken with his creditors.

Overall, Applicant’s actions to date in addressing his finances are promising and enable him to overcome any reasonable doubts about his trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18. Conclusions are warranted that his finances are sufficiently stabilized at this time to meet minimum eligibility requirements for holding a security clearance. Financial concerns are mitigated.

Favorable conclusions are warranted with respect to SOR ¶¶ 1.a-1.h. Criteria for meeting the eligibility requirements for holding a security clearance are satisfied.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): FOR APPLICANT

Subparagraphs 1.a-1.h:

For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility to hold a security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge

